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Attorneys for Complainant

**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 2002 63125

THOMAS H. MU, P.T.
1421 Crestwood Drive
San Bruno, CA 94066-1907

Physical Therapy License No. PT 27492

Respondent.

A C C U S A T I O N

Date: September 25, 2003

Time: 10:00 a.m.

Place: Office of Administrative
Hearings

1350 Front Street, Suite 6022
San Diego, CA 92101

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On or about July 24, 2002, the Physical Therapy Board of California issued Physical Therapy license Number PT 27492 to MU THOMAS (Respondent).

JURISDICTION

3. This Accusation is brought before the Physical Therapy Board of California (Board), Department of Consumer Affairs, under the authority of the following laws:

1 California Government Code, California Business and Professions Code (hereinafter "Code"),
2 the California Penal Code and the California Code of Regulations.

3 4. Section 2609 of the Code states:

4 AThe Board shall issue, suspend, and revoke licenses and approvals to practice
5 physical therapy as provided in this chapter.

6 5. Section 2660 of the Code states:

7 AThe Board may, after the conduct of appropriate proceedings under the
8 Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose
9 probationary conditions upon, or issue subject to terms and conditions any license, certificate, or
10 approval issued under this chapter for any of the following causes:



11 A(a) - (c)

12 A(d) Conviction of a crime which substantially relates to the qualifications,
13 functions, or duties of a physical therapist. The record of conviction or a certified copy thereof
14 shall be conclusive evidence of that conviction.

15 A(e) - (h)

16 A(i) Conviction of a violation of any of the provisions of this chapter or of the
17 State Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or
18 assisting in or abetting the violating of, or conspiring to violate any provision or term of this
19 chapter or of the State Medical Practice Act.

20 A(j) - (k)

21 A(l) The commission of any fraudulent, dishonest, or corrupt act which is
22 substantially related to the qualifications, functions, or duties of a physical
23 therapist.

24 6. Section 2661.5 of the Code states:

25 A(a) In any order issued in resolution of a disciplinary proceeding before the
26 Board, the Board may request the administrative law judge to direct any licensee found guilty of

1 unprofessional conduct to pay to the Board a sum not to exceed the actual and reasonable costs
2 of the investigation and prosecution of the case.

3 A(b) The costs to be assessed shall be fixed by the administrative law judge
4 and shall not in any event be increased by the Board. When the Board does not adopt a proposed
5 decision and remands the case to an administrative law judge, the administrative law judge shall
6 not increase the amount of the assessed costs specified in the proposed decision.

7 A(c) When the payment directed in an order for payment of costs is not made by
8 the licensee, the Board may enforce the order of payment by bringing an action in any
9 appropriate court. This right of enforcement shall be in addition to any other rights the Board
10 may have as to any licensee directed to pay costs.

11 A(d) In any judicial action for the recovery of costs, proof of the Board's decision
12 shall be conclusive proof of the validity of the order of payment and the terms for payment.

13 A(e) (1) Except as provided in paragraph (2), the Board shall not renew or
14 reinstate the license or approval of any person who has failed to pay all of the costs ordered
15 under this section.

16 A(2) Notwithstanding paragraph (1), the Board may, in its discretion,
17 conditionally renew or reinstate for a maximum of one year the license or approval of any person
18 who demonstrates financial hardship and who enters into a formal agreement with the Board to
19 reimburse the Board within that one year period for those unpaid costs.

20 A(f) All costs recovered under this section shall be deposited in the Physical
21 Therapy Fund as a reimbursement in either the fiscal year in which the costs are actually
22 recovered or the previous fiscal year, as the Board may direct.@

23 7. California Code of Regulations, title 16, section 1399.20, states:

24 AFor the purposes of denial, suspension or revocation of a license or approval,
25 pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be
26 considered to be substantially related to the qualifications, functions or duties of a person

1 holding a license or approval under the Physical Therapy Practice Act if to a substantial degree it
2 evidences present or potential unfitness of a person to perform the functions authorized by the
3 license or approval in a manner consistent with the public health, safety or welfare. Such crimes
4 or acts shall include but not be limited to the following:

5 A(a) Violating or attempting to violate, directly or indirectly, or assisting in or
6 abetting the violation of, or conspiring to violate any provision or term of the Physical Therapy
7 Practice Act.

8 A(b) Conviction of a crime involving fiscal dishonesty arising out of or in
9 connection with the practice of physical therapy.

10 A(c) Violating or attempting to violate any provision or term of the Medical
11 Practice Act.@

12 8. California Penal Code section 261(a)(4) provides in pertinent part: ARape
13 is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator,
14 under any of the following circumstances:

15 A(1) - (3)

16 A(4) Where a person is at the time unconscious of the act, and this is known to
17 the accused. As used in this paragraph, Aunconscious of the nature of the act@ means
18 incapable of resisting because the victim meets one of the following conditions:

19 A(A) Was unconscious or asleep.

20 A(B) Was not aware, knowing, perceiving, or cognizant that the act occurred.

21 A(C) Was not aware, knowing, perceiving, or cognizant of the essential
22 characteristics of the act due to the perpetrator=s fraud in fact.

23 A(D) Was not aware, knowing, perceiving, or cognizant of the essential
24 characteristics of the act due to the perpetrator=s fraudulent representation the sexual
25 penetration served a professional purpose when it served no professional purpose.@

26 **FIRST CAUSE FOR DISCIPLINE**
(Conviction for Rape - Penal Code Section 261(a)(4))

9. Respondent, Thomas H. Mu, is subject to discipline under code sections 2660(d), (i) and (l) and under California Code of Regulations, title 16, section 1399.20(a), (b) and (c), in that he was convicted of felony rape of an unconscious person under Penal Code Section 261(a)(4). The circumstances are as follows:

A. On or about the evening of January 18, 2002, respondent raped an unconscious victim, Julie O., at his apartment 1421 Crestwood Drive, San Bruno, California.

B. On March 28, 2003, Respondent was convicted of violation of Penal Code section 261(a)(4), as charged in the indictment. A rape conviction under the circumstances of this case, is a offense substantially related to the qualifications, functions or duties of a Physical Therapists.

C. On May 5, 2003, Respondent requested and was granted 5 years formal felony probation. The terms of probation include: (1) serve 120 days local custody, (2) register as a sex offender, (3) restitution to victim and (4) other standard terms and conditions. The ISS conviction is final with in the meaning of Business and Professions Code sections 2260(d) and 2661.

SECOND CAUSE FOR DISCIPLINE

(Perjury/Dishonest Acts)

10. Respondent, Thomas H. Mu, is subject to discipline under code sections 2660 (l) and under California Code of Regulations, title 16, section 1399.20(c), in that he knowingly gave testimony at his criminal trial, under oath, that was false. The circumstances are as follows:

11. On or about January 27, 2003, Respondent testified under oath in his own criminal jury trial to a false set of facts in an effort to convince the jury that: (1) he had no knowledge or reason to believe the victim was asleep or unconscious or incapable of knowing the nature of the acts; and/or, (2) that the rape victim was conscious and knowledgeable of the sexual nature of the

1 acts, (3) the victim was willing, consented and actively participated as his
2 sexual partner. Penal Code section 261(a)(4) requires proof beyond any
3 reasonable doubt that, (1) the victim Unconscious@ as defined by statute and,
4 12. (2) the defendant knew the victim was unconscious. Respondent=s new
5 factual account of the incident was not disclosed until he testified at trial and
6 some of it conflicted with his prior statement to detectives. The jury found his
7 testimony to be false and made the 2 findings required for a guilty verdict.
8

9 12. Perjury/ false statements given over a year after the rape are separate
10 dishonest acts which are substantially related to the qualifications, functions, or duties as a
11 physical therapist.
12

13 PRAYER

14 WHEREFORE, Complainant requests a hearing be held on the matters alleged, and that
15 following the hearing, the Physical Therapy Board of California issue a decision:

16 1. Revoking or suspending Physical Therapy License No. PT 27492, issued
17 to MU THOMAS;

18 2. Ordering MU THOMAS to pay the Physical Therapy Board of California
19 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
20 Professions Code section 2661.5;

21 3. Taking such other and further action as deemed necessary and proper.
22 DATED: August 29, 2003.

23 Original Signed By
24 DOUGLAS MACCARTEE,
25 Deputy Attorney General, For:
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Original Signed By
STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
Department of Consumer Affairs
State of California

Complainant

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Mu Accusation 8.wpd
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